

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRENDA STOOTTS EWING, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

ADMINISTRATIVE SYSTEMS, INC.,

Defendant.

No. 08-CV-0797 RAJ

**ORDER PRELIMINARILY
APPROVING AMENDED CLASS
ACTION SETTLEMENT,
CONDITIONALLY CERTIFYING
SETTLEMENT CLASS AND
APPROVING CLASS NOTICE**

Before the Court is a motion (Dkt. # 23) by Brenda Ewing (“Representative Plaintiff”), requesting that the Court enter an Order: (1) preliminarily approving, pursuant to Fed. R. Civ. P. 23(e), the settlement set forth in the Amended Class Action Settlement Agreement and Exhibits thereto (the “Amended Settlement Agreement”), which was filed with the Court on April 17, 2009, and supplemented on May 14, 2009, (2) approving the proposed form of notice (“Notice”) and the proposed method of providing the Notice to the potential members of the Settlement Class; (3) appointing Trilegiant Corporation as the Claims Administrator, whose responsibilities shall include, among other things, providing the Notice to the potential members of the Settlement Class; (5) preliminarily certifying the Settlement Class for settlement purposes only; (6) appointing Brenda Ewing as the Representative Plaintiff; (7) appointing Class Counsel; and (8) scheduling a hearing to consider final approval of the settlement and related matters.

1 Having reviewed and considered the Amended Settlement Agreement, the motion,
2 memorandum, the Joint Supplemental Brief in Support of Preliminary Approval of Settlement
3 (Docket Entry No. 26) and other material submitted in support of the request to preliminarily
4 approve the Amended Settlement Agreement, and having considered the arguments of counsel,
5 the Court preliminarily approves the settlement contained in the Amended Settlement
6 Agreement, as supplemented on May 14, 2009, on the terms and conditions set forth in this
7 Preliminary Approval Order.

8 The court directs that notice to class members in accordance with the Amended
9 Settlement Agreement shall take place by July 10, 2009. The deadline is September 4 for class
10 members to opt out of the settlement class, object to the settlement, or submit written comments.
11 The final fairness hearing, wherein the court will consider final approval of the class settlement
12 as well as any motions for attorney fees and costs, will take place on September 23, 2009 at
13 10:00 a.m. in the courtroom of the undersigned judge. The parties are directed to ensure that
14 these dates are inserted where appropriate in the notice to class members. In addition, the parties
15 shall modify the deadlines in the proposed claim forms so that they state actual dates in
16 compliance with the Amended Settlement Agreement, and shall also insert a proper address for
17 the Claims Administrator. When providing a declaration in accordance with paragraph 9 of the
18 following order, the parties shall provide copies of the notice form and claim forms that were
19 sent to class members.

20 The remainder of this order adopts the language of the parties' proposed preliminary
21 approval order, except for the insertion of dates. Capitalized terms and phrases in this Order
22 shall have the same meaning as defined in the Amended Settlement Agreement.

23 **FINDINGS**

24 The Court makes the following findings of fact based on the terms and conditions of the
25 Amended Settlement Agreement and the other evidence before this Court, subject to final
26 consideration at the Final Fairness Hearing provided for below:

1 1. Definition of Settlement Class.

2 The Action was brought on behalf of all Persons about whom Class Information was
3 stored on the computer that was stolen in the ASI Security Breach. The Settlement Class is
4 defined as:

5 All Persons, information as to whom is included in the Class
6 Information, or who have or could have a right or interest as to such
7 information derived from or arising out of a right or interest of such
8 Persons. Excluded from the definition of the Settlement Class are (i)
9 ASI and its officers and directors; (ii) the Court presiding over any
10 motion to approve this Settlement Agreement; and (iii) those Persons
11 who timely and validly request exclusion from the Class.

9 2. Settlement Agreement Fairness.

10 a. The Amended Settlement Agreement is the product of good faith, arm's-
11 length, serious, informed, and non-collusive negotiations between Class Counsel and counsel for
12 ASI. The parties engaged in lengthy and detailed settlement discussions that included the
13 exchange of information concerning the investigation into the theft of ASI's computer, the
14 content of the Class Information, the response of affected individuals to the Pre-Litigation Notice
15 and the Pre-Litigation Offer, and Class Counsel's investigation of the facts giving rise to the
16 allegations made in the Action. Class Counsel and counsel for ASI are knowledgeable and
17 experienced in class action litigation and in the subject matter involved in this case.

18 b. Potential Settlement Class Members will have the opportunity to opt out
19 of the Settlement Class, and if they do not opt out, to object to the terms of the Amended
20 Settlement Agreement.

21 c. Class Counsel are recommending that the Court approve the settlement set
22 forth in the Amended Settlement Agreement.

23 d. The terms of the Amended Settlement Agreement are sufficiently within a
24 range of reasonableness as to justify preliminary approval and notification to the potential
25 members of the Settlement Class of the proposed settlement and to merit a hearing as to whether
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1 the settlement should be approved as fair, reasonable, adequate and in the interests of the
2 potential Settlement Class Members.

3 e. Conditional certification for settlement purposes only of the Settlement
4 Class is appropriate under Fed. R. Civ. P. 23 (b)(3).

5 3. No Admission. The Amended Settlement Agreement does not constitute and
6 shall not be construed as an admission on the part of any of the Settling Parties. Representative
7 Plaintiff continues to affirm her allegations and claims of fault and liability. Defendant
8 continues to deny Representative Plaintiff's allegations and disclaims any fault or liability.

9 4. Form, Content, and Manner of Providing Notice. The Court has reviewed the
10 plan specified in the Amended Settlement Agreement for providing notice to potential members
11 of the Settlement Class of the proposed settlement and their rights to opt out of the settlement or
12 object to the terms of the Amended Settlement Agreement. That plan and the form of the
13 proposed Notice comport with all the requirements of Fed. R. Civ. P. 23 and state and federal
14 standards of constitutional due process as the best notice practicable under the circumstances of
15 this case. The Notice is accurate and informs the potential Settlement Class Members of the
16 claims and defenses asserted in the Action, the reasons for the settlement and the effect on the
17 Settlement Class Members' legal rights if the Judgment becomes final and the Effective Date
18 occurs with regard to the Amended Settlement Agreement. The Court notes that ASI has
19 previously mailed one or more notices to the potential members of the Settlement Class and, in
20 doing so, has updated the addresses used in sending in the Notice, further supporting the finding
21 that mailing the Notice is the best notice practicable under the circumstances. The timing of
22 notice in advance of the Final Fairness Hearing provides the potential Settlement Class Members
23 with the time and information necessary to make an informed decision about whether to
24 participate in the Settlement and constitutes due and sufficient notice of this Order and of the
25 Final Fairness Hearing.

26 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

1 1. Having made the findings set forth above, the Court preliminarily certifies the
2 Settlement Class for settlement purposes only in accordance with the terms of the Amended
3 Settlement Agreement (the “Settlement Class”), pursuant to Fed. R. Civ. P. 23(b)(3) and 23(e).

4 2. For purposes of holding the Final Fairness Hearing, the Court appoints Barbara
5 Stoots Ewing as the representative for the proposed Settlement Class, for settlement purposes
6 only.

7 3. The Court preliminarily approves the settlement set forth in the Amended
8 Settlement Agreement as fair, reasonable, and adequate under Fed. R. Civ. P. 23 and the Class
9 Action Fairness Act of 2005 (“CAFA”), subject to final consideration at the Final Fairness
10 Hearing.

11 4. Anthony D. Shapiro and Thomas E. Loeser of Hagens Berman Sobol Shapiro
12 LLP, Christopher L. Brown, J. Mitchell Clark and Robert J. Wozniak, Jr., of Freed Kanner
13 London & Millen, LLC are appointed as co-lead counsel for the Settlement Class (“Class
14 Counsel”).

15 5. The Final Fairness Hearing will be held on September 23 at 10:00 a.m., in
16 Courtroom 13106 on the 13th Floor of the United States District Court for the Western District of
17 Washington, U.S. Courthouse, United States Courthouse, 700 Stewart Street, Seattle, WA
18 98101-1271, to determine: (a) whether the settlement set forth in the Amended Settlement
19 Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class;
20 (b) whether a Judgment as provided in the Amended Settlement Agreement should be entered
21 dismissing the Action with prejudice and granting final approval of the settlement; and (c) if the
22 settlement is approved, in what amount Class Counsel should be awarded attorneys’ fees, costs
23 and expenses and whether and in what amount Representative Plaintiff should receive an
24 incentive award. The Court may adjourn and/or continue the Final Fairness Hearing without
25 further notice to potential Settlement Class Members.
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1 6. The Court approves the Notice as to form and content. The Court approves the
2 plan for providing the Notice to the potential members of the Settlement Class. The form of the
3 proposed Notice and the plan comport with all the requirements of Fed. R. Civ. P. 23 and state
4 and federal standards of constitutional due process as the best notice practicable under the
5 circumstances of this case.

6 7. The Court approves of and appoints Trilegiant Corporation to perform the duties
7 of the Claims Administrator as set forth in the Amended Settlement Agreement.

8 8. No later than July 10, 2009, the Claims Administrator will mail the Notice to each
9 of the potential Settlement Class Members at the most recent address known to the Claims
10 Administrator or to ASI or such updated address as may be obtained through the address
11 updating database maintained by the US Postal Service.

12 9. No later than fourteen (14) calendar days before the Final Fairness Hearing, Class
13 Counsel and ASI shall file with the Court one or more declarations stating that, in accordance
14 with the terms of this Order, the Notice was provided by timely mailing it to potential Settlement
15 Class Members at their last known addresses.

16 10. ASI shall comply with the obligation to give notice under CAFA, 28 U.S.C.
17 § 1715, in connection with the proposed settlement. No later than fourteen (14) calendar days
18 before the Final Fairness Hearing, counsel for ASI shall file with the Court one or more
19 declarations stating that ASI has complied with its notice obligations under 28 U.S.C. § 1715.

20 11. Class Counsel shall file with the Court and serve on counsel for ASI the
21 application for attorney's fees and costs and a memorandum in support of final approval of the
22 Settlement Agreement no later than fourteen (14) calendar days before the Fairness Hearing.

23 12. Each Person wishing to opt out of the Settlement Class shall individually sign and
24 timely submit an Opt-Out Request to a designated Post Office Box established by the Claims
25 Administrator, as set forth in the Notice. To be effective, the Opt-Out Request must be
26 postmarked no later than September 4, 2009.

1 13. Within ten (10) calendar days after the deadline for Persons to opt out of the
2 Settlement Class, the Claims Administrator shall furnish to Class Counsel and to counsel for ASI
3 a complete list of all timely and valid Opt-Out Requests (the "Opt-Out List").

4 14. If the Effective Date occurs, all Persons falling within the definition of the
5 Settlement Class who do not request to be excluded from the Settlement Class shall be
6 Settlement Class Members and shall be bound by the terms of the Amended Settlement
7 Agreement, the Judgment entered thereon, and all Orders entered by the Court in connection
8 with the settlement set forth in the Amended Settlement Agreement.

9 15. All Persons who submit valid and timely Opt-Out Requests shall not gain any
10 rights or benefits by virtue of or be bound by the terms of the Amended Settlement Agreement,
11 and shall not be entitled to object to any aspect of the Amended Settlement Agreement.

12 16. Settlement Class Members who qualify for and wish to submit a Benefit Claim
13 under the Amended Settlement Agreement shall do so in accordance with the requirements and
14 procedures of the Amended Settlement Agreement. Settlement Class Members who fail to
15 submit a Benefit Claim in accordance with the requirements and procedures of the Amended
16 Settlement Agreement shall be forever barred from receiving any such benefit, but will in all
17 other respects be subject to and bound by the provisions of the Amended Settlement Agreement,
18 the releases contained therein and the Judgment.

19 17. Each Settlement Class Member wishing to object to the settlement shall submit a
20 timely written notice of his objection as required by the Amended Settlement Agreement. Such
21 notice shall state: (i) the objector's full name, address, telephone number and e-mail address,
22 (ii) a written statement of all grounds for the objection accompanied by any legal support for the
23 objection, (iii) copies of any papers, briefs or other documents upon which the objection is based,
24 and (iv) the identity of all counsel representing the objector. If such Member intends to attend
25 the Final Fairness Hearing, the notice shall also state: (v) the identity of all counsel representing
26 the objector who will appear at the Fairness Hearing, (vi) a list of all persons who will be called

1 to testify at the Fairness Hearing in support of the objection, (vii) a statement confirming whether
2 the objector intends to testify at the Fairness Hearing, (viii) a list of other class action cases in
3 which the objector or objector's counsel have appeared as settlement objectors or as counsel for
4 settlement objectors in the preceding five (5) years, and (ix) the objector's signature or the
5 signature of the objector's duly authorized attorney or other duly authorized representative. To
6 be timely, written notice of an objection must be filed, or placed in the mail for filing, with the
7 Clerk of the United States District Court for the Western District of Washington, U.S.
8 Courthouse, United States Courthouse, 700 Stewart Street, Seattle, WA 98101-1271, no later
9 than September 4, 2009, and must be served by that same date upon Class Counsel at: Thomas E.
10 Loeser, Hagens Berman Sobol Shapiro LLP, 1301 Fifth Avenue, Suite 2900, Seattle, WA,
11 98101; and on counsel for ASI at: Tim J. Filer, Foster Pepper PLLC, 1111 Third Avenue, Suite
12 3400, Seattle, WA 98101.

13 18. All discovery and pretrial deadlines and proceedings in this Action are stayed and
14 suspended until further order of this Court. Pending the outcome of the Final Fairness Hearing,
15 no potential Settlement Class Member, either directly, representatively, or in any other capacity,
16 shall institute, commence, or prosecute any of the Released Claims in any action or proceeding
17 in any court or tribunal.

18 19. The Parties have entered into a Memorandum of Understanding, an original
19 Settlement Agreement and the Amended Settlement Agreement. These documents, the
20 settlement terms contained therein, and any act performed or document executed pursuant
21 thereto: (a) are not and shall not be deemed to be, and may not be used as an admission of, or
22 evidence of, the validity or lack thereof of any Released Claim, or of any wrongdoing or liability
23 of ASI; and (b) are not or and shall not be deemed to be, and may not be used as an admission of,
24 or evidence of, any fault or omission of ASI, in any civil, criminal, or administrative proceeding
25 in any court, administrative agency, or other tribunal.
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1 20. If the Court does not grant final approval of the Amended Settlement Agreement,
2 the settlement set forth in the Amended Settlement Agreement is terminated in accordance with
3 its terms, or the Effective Date does not occur for any reason, this Preliminary Approval Order
4 and any judgment or order entered by the Court in accordance with the terms of the Amended
5 Settlement Agreement shall be treated as vacated, *nunc pro tunc*, and the parties shall return to
6 their respective litigation positions as of the date immediately prior to its entry, except that all
7 scheduled litigation deadlines shall be reasonably extended so as to avoid prejudice to any party.
8 In such event, the terms and provisions of the Amended Settlement Agreement, other than those
9 relating to the return of the Settlement Fund to ASI and the judgment credit provided for in
10 Amended Settlement Agreement Paragraph 10.4 shall have no further force and effect with
11 respect to the Settling Parties and shall not be used in the Action or in any other proceeding for
12 any purpose.

13 IT IS SO ORDERED.

14 Dated this 8th day of June, 2009.

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18 The Honorable Richard A. Jones
19 United States District Judge
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